Wills—No Presumption of Testamentary Incapacity Because Testator Had Epilepsy.—In Craite *v.* Morneau, 184 N. W. 705, the Supreme Court of Wisconsin held that while the fact that a testator had epilepsy may be important in determining the question of testamentary capacity, neither insanity nor testamentary incapacity can be presumed from the fact that he had long suffered from that ailment.

The court said in part: "We have been surprised to find that the effect of epilepsy upon testamentary capacity has been so seldom passed upon by the courts of last resort. Only one such case is cited in the briefs of counsel, to wit, In re Michael Lewis' Will, 51 Wis. 101, 7 N. W. 829. In that case, the general testimony showing peculiarities and weakness of mind of the testator was more weighty than in the instant case. In that case the testator was about 60 years of age when the will was executed. He had been absent from Wisconsin for several years, and returned to the state for the purpose of selling his land. The will bore date March 12. On the day before he had been seized with a fit and became unconscious. There was another seizure within about 5 minutes after the execution of the will, and on the 14th of March he died. In an opinion by Mr. Justice Lyon, the will was sustained, and it is stated:

"'It is doubtless within the knowledge of almost every person of ordinary intelligence that the victims of that malady frequently retain their mental faculties fully to the moment of attack, especially in the earlier stages of the malady.'

"In the present case there is no proof of any seizure for some weeks before or after the execution of the will. The testimony shows that the testator first went to his notary public, and then to Mr. Coe, who prepared the will, and on both occasions in their judgment seemed in a normal frame of mind. Undoubtedly he had long been the victim of a deplorable mental disease, and there had probably been some impairment of his mental powers before the execution of the will. From the answers filled in by the medical examiners when the testator was adjudged insane, it is argued by proponent's counsel that he was not then insane; but it is unnecessary to decide this question. Presumptions are not generally retrospective and even if he was insane at the time of the commitment, it does not follow that he was insane 4 years and 8 months before. Neither insanity nor testamentary incapacity can be presumed from the fact that a testator has long suffered from epilepsy. It is true that such a condition may be an important fact, in connection with other facts in the determination of the question; but it is a matter of common knowledge that many persons have long been the victims of this dread disease, and yet possessed in the intervals between at-

tacks a high degree of mental power. In Ray's Medical Jurisprudence of Insanity, it is said, at page 477:

"'Zacchias contends that epileptics should not be responsible for any acts committed within 3 days of a fit, before or after. The principle is undoubtedly sound as it regards criminal acts; and certainly civil acts performed within 2 or 3 days after a fit deserve to be closely scrutinized. Not infrequently, however, the intellect may be as clear and strong as usual up to the very moment of an attack, and therefore it would seem as if other and satisfactory reasons should be required for invalidating transactions executed under such circumstances.'

"It cannot be said that, because a person is an epileptic, he is therefore insane. In re Will of Rapplee, 66 Hun (N. Y.) 558, 21 N. Y. Supp. 801; In re Johnston's Will, 7 Misc. Rep. 220, 27 N. Y. Supp. 649; Estate of Jansa, 169 Wis. 220, 171 N. W. 947."